

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAVONA FULTON

Claimant

VS.

SUNFLOWER TRAINING CENTER

CONSUMER TRAINING & ASI MARKET RESEARCH

Respondents

AND

TRAVELERS INSURANCE COMPANY

CNA INSURANCE

Insurance Carriers

Docket No. 169,269

ORDER

ON March 24, 1994, claimant's application for review of the February 2, 1994, Award of Administrative Law Judge George R. Robertson came on for oral argument.

APPEARANCES

The claimant appeared by and through her attorney, Gail Carpenter, of Great Bend, Kansas. The respondent Sunflower Training Center and its insurance carrier, Travelers Insurance Company, appeared by and through their attorney, Jerry M. Ward, of Great Bend, Kansas. The respondent ASI Market Research and its insurance carrier, CNA Insurance, appeared by and through their attorney, John D. Jurcyk, of Lenexa, Kansas. There were no other appearances.

RECORD

The record considered on appeal is the same as that listed in the February 2, 1994, Award of Administrative Law Judge George R. Robertson.

STIPULATIONS

The Appeals Board adopts the stipulations listed in the February 2, 1994, Award of Administrative Law Judge George R. Robertson.

ISSUES

The only issue on appeal is whether claimant's bilateral carpal tunnel syndrome arose out of and in the course of her employment with either one or both of the respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant contends that she developed bilateral carpal tunnel syndrome from her work at both Sunflower Training Center and ASI Market Research. She worked at Sunflower from June 6, 1991, until August 26, 1992, in food service, principally preparing and assisting with the preparation of the lunch meal for 50 to 60 people. She worked at ASI from April of 1991, to June of 1992. At ASI she assisted with telephone surveys by recruiting individuals to watch certain television programs and interviewing those individuals after the program was shown. The duties, especially those connected with interviewing, included typing.

The Appeals Board finds that the claimant failed to meet her burden to establish that her bilateral carpal tunnel syndrome was caused by work for either employer. Facts relating to each employer will be discussed separately.

The claim against ASI appears to be the weaker of the two claims. Claimant's testimony at hearings in this case as well as the history she gave to two treating physicians points primarily to her duties at Sunflower, not ASI, as the cause of her condition. Claimant testified at regular hearing that she felt the problems started when she started at Sunflower. Dr. Doerry, the family practice physician claimant first saw, did not believe that the duties of typing at ASI would have been the cause of her condition. Dr. Fleske, an orthopedic surgeon who also treated the claimant, indicated that typing could cause the condition but also indicated he really didn't know what she did at ASI. He did not give a medical opinion that her condition was caused by her work at ASI. His opinion that work caused the condition was based on what she did at Sunflower.

Although claimant testified her symptoms started after she started at Sunflower, in June 1991, she also indicated she didn't really notice the symptoms much until she was on vacation in December of 1991. According to claimant the vacation relieved the symptoms and they then became worse after she returned in January of 1992. Claimant stopped working at ASI in June 1992, and worked less than a total of 16 hours as an interviewer from January 1992 through June 1992, the period when claimant indicates her symptoms worsened. The evidence does not establish the work at ASI caused bilateral carpal tunnel.

The Appeals Board also finds that claimant has failed to show that the activities at Sunflower caused her carpal tunnel condition. The Appeals Board reaches this conclusion for two reasons. First, it appears that claimant has significantly exaggerated how much hand work was required at Sunflower. The history she gave to Dr. Doerry led Dr. Doerry to believe claimant stirred mashed potatoes in large quantities on a daily basis for a prolonged period of time. At the regular hearing, claimant testified her work required substantial stirring and other hand work.

Respondent presented the testimony of Sarah E. Krom, who described in some detail the work claimant performed at Sunflower. This testimony, which we find credible, is inconsistent with claimant's description of the duties. According to Ms. Krom, claimant was not required to do significant amounts of work with her hands. Her job was to teach others how to perform the cooking and food preparation duties. Much of the food was

prepared commercially and required very little additional work at Sunflower. Claimant did not stir or mash potatoes daily.

Both Dr. Doerry and Dr. Fleske concluded the work at Sunflower caused or aggravated claimant's carpal tunnel syndrome. It appears, however, neither opinion can be given significant weight as they rely on the exaggerated history given by claimant. Dr. Doerry relies specifically upon the history of prolonged and daily stirring. Dr. Fleske relies more generally on claimant's description of her duties.

Were this difference in the description of the activities the only concern, the Appeals Board might find it most likely that claimant's injury did arise from her work at Sunflower. The work did involve use of the hands even if not to the extent claimant described. Claimant's testimony relating to onset and development of symptoms supports her claim. Dr. Fleske testified that the work at Sunflower caused her carpal tunnel condition and his opinion does not appear to be as dependent upon a misunderstanding of the nature of her work as was Dr. Doerry's.

However, a second consideration persuades the Appeals Board to deny the claim. Two of the individuals who work with claimant at Sunflower gave testimony inconsistent with that given by claimant. Both appear credible. Ms. Krom testified that claimant told her that she believed the condition was from years of making doughnuts and working in restaurants. She did not relate it in any way to the work at Sunflower. Ms. Shelly Shelton testified that claimant told her that she was submitting a claim to Blue Cross/Blue Shield relating to her wrists. She indicated that she and the claimant took breaks together in the course of their work at Sunflower and that claimant had never mentioned any problem with her wrists in the course of that employment. This testimony directly contradicts claimant's testimony that she did not have the carpal tunnel symptoms until after she started at Sunflower.

The credible evidence therefore undermines the two key elements of claimant's attempt to relate her condition to the work at Sunflower: (1) the extent of alleged repetitive hand activities; and (2) the association of the onset and worsening of her symptoms to the time of her work at Sunflower. Claimant has failed to establish the injury was caused by her work at Sunflower.

For the above stated reasons the Appeals Board finds that claimant has failed to meet her burden of showing that her bilateral carpal tunnel condition arose out of and in the course of her employment with either Sunflower or ASI. Accordingly, the decision by the Administrative Law Judge denying benefits is hereby affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the February 2, 1994, Award of Administrative Law Judge George R. Robertson is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Gail Carpenter, PO Box 1626, Great Bend, Kansas 67530-1626
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George R. Robertson, Administrative Law Judge
George Gomez, Director